

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

Editor's Note: The following Notice of Final Rulemaking was originally published at 9 A.A.R. 1867, June 13, 2003. At the request of the Department of Transportation, the Office of the Secretary of State is republishing the Notice here because Article 2 was incorrectly listed as Article 5 in the table of contents and text of the rules.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

PREAMBLE

1. Sections Affected

R17-5-202
R17-5-203
R17-5-206
R17-5-209

Rulemaking Action

Amend
Amend
Amend
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-5204 and 28-5235

3. The effective date of the rules:

June 3, 2003. The Department is requesting an immediate effective date upon filing with the Secretary of State as allowed under A.R.S. § 41-1032(A). An immediate effective date is needed so the agency rules are up to date with the current Code of Federal Regulations. This will protect the public by allowing the Department to enforce the federal law applicable to safety of motor carriers that operate on Arizona roads. It also will allow the Department to continue to collect the federal Motor Carrier Safety Assistance Program (MCASP) grant funds of approximately \$1.8 million to state law enforcement of motor carrier safety and Hazmat programs.

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 9 A.A.R. 477, February 14, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 862, March 14, 2003

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

MVD engages in this rulemaking to amend its Motor Carrier Safety rules as follows:

1. To incorporate sections of the 2002 edition of the 49 CFR by reference into Arizona Motor Carrier Safety and Hazardous Materials Transportation administrative rules.
2. To create two additional subsections that harmonize federal regulations with Arizona's current motor carrier safety program.

Amendments to R17-5-208 were being considered at the time the Notice of Rulemaking Docket Opening was published. For purposes of this update of motor carrier safety regulations, however, the agency has determined not to amend R17-5-208.

Benefits of the rule will allow the agency to continue to collect the federal Motor Carrier Safety Assistance Program (MCASP) grant funds of approximately \$1.8 million to state law enforcement of motor carrier safety and Hazmat programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs. Hazardous material transport businesses benefit from rule compliance in decreased insurance premium costs, increased transportation safety, and subsequent better service to their customers resulting from expedited enforcement processing. Independent trainers in Hazmat compliance benefit through course fees that can amount to as much as \$400 per class offering.

This rulemaking is an annual update that does not arise from a five-year review.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not rely on any study for this rulemaking.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The primary cost bearers of this rule's provisions are the Arizona Department of Public Safety (DPS) in the public arena and business entities engaged in transporting hazardous materials in the private sector. DPS incurs substantial costs of \$20,000 annually for program administration as well as a not readily quantifiable portion of 47 officer salaries averaging \$40,000 each for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under \$10,000) in possible federal registration fees, inspection fees, insurance, and equipment maintenance in order to remain in compliance to rule provisions. Costs of non-compliance to the business entity could be moderate to substantial monetary sanctions (\$5,000 to \$25,000) with possible loss of registration and driver license as prescribed under A.R.S. § 28-5238. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance-provisions.

Benefits of the rule bring federal Motor Carrier Safety Assistance Program (MCSAP) grant funds of approximately \$1.8 million to state law enforcement of motor carrier safety and Hazmat programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs. Hazardous material transport businesses benefit from rule compliance in decreased insurance premium costs, an increased margin of transportation safety, and subsequent better service to their customers resulting from expedited enforcement processing. Independent trainers in Hazmat compliance benefit through course fees which can amount to as much as \$400 per class offering.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Only minor grammatical, sentence structure, and syntactical changes were made upon recommendations by the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The agency did not receive any comments on this rulemaking.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

In R17-5-202, subsection (A):

49 CFR Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2002.

In R17-5-209, subsection (A):

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180, published October 1, 2002.

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14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

ARTICLE 2. MOTOR CARRIERS

Section

- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Application
R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information
R17-5-206. Motor Carrier Safety: Amendment to 49 CFR 392
R17-5-209. Hazardous Materials Transportation

ARTICLE 2. MOTOR CARRIERS

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Application

- A. The Division incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, ~~2001~~, 2002 and no later amendments or editions, with the changes described in R17-5-202 through R17-5-508. Copies of the incorporated material are on file with the Federal Motor Carrier Safety Administration, the Division, and the Office of the Secretary of State.
- B. The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-5-203 through R17-5-208 to:
1. A motor carrier as defined in A.R.S. § 28-5201 except a motor carrier transporting passengers for hire in a motor vehicle with a design capacity of six or fewer persons.
 2. A vehicle owned or operated by the state, a political subdivision, or a public authority of the state that is used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

- A. 49 CFR 390.3 General applicability is amended as follows:
1. Paragraph (a) is amended to read:
Regulations incorporated in this Section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.
 2. Paragraph (b) is amended to read:
A motor carrier driver domiciled in Arizona who operates a commercial motor vehicle defined in A.R.S. § 28-3001 shall comply with the requirements of A.R.S. Title 28, Chapter 8 and any rule made under that Chapter.
 3. Paragraph (c) is amended to read:
A motor carrier operating in Arizona in furtherance of a commercial enterprise, shall comply with the financial responsibility requirement specified in A.R.S. Title 28, Chapter 9, Article 2, and 49 CFR 387.
 4. Paragraph (f)(6) is deleted.
- B. 49 CFR 390.5 Definitions. The definitions listed in 49 CFR 390.5 are amended as follows:
1. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the controlled substances and alcohol use and testing requirement of 49 CFR 382, the term has the meaning prescribed in 49 CFR 382.107.
 2. If the term "Commercial Motor Vehicle" or "CMV" is used in reference to the licensing requirements prescribed under A.R.S. § 28-3223, the term has the meaning prescribed under A.R.S. § 28-3001.
 3. If the term "Commercial Motor Vehicle" or "CMV" is not used in reference to the controlled substances and alcohol use and testing requirement of 49 CFR 382 or the licensing requirement prescribed under A.R.S. § 28-3223, the term means a self-propelled, motor-driven vehicle or vehicle combination, used on a public highway in this state in furtherance of a commercial enterprise that:
 - a. Has a gross vehicle weight rating (GVWR) as a single vehicle or a gross combination weight rating (GCWR) of 18,001 pounds or more for purposes of intrastate commerce;
 - b. Transports passengers for hire and has a design capacity of seven or more persons; or
 - c. Transports a hazardous material in an amount requiring marking or placarding as prescribed in R17-5-209;
 - d. Is not an intrastate-operating tow truck that has a GVWR up to 26,000 pounds, but a tow truck operator remains subject to all other provisions prescribed under 49 CFR 391.41, 391.43, 391.45, 391.47, and 391.49; and
 - e. Operates for purposes of interstate commerce with a GVWR of greater than 10,001 pounds.

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4. "Exempt intracity zone" is deleted and has no application in R17-5-203 through R17-5-206.
 5. "For-hire motor carrier," "private motor carrier," "private motor carrier of passengers (business)," and "private motor carrier of passengers (nonbusiness)" are deleted from R17-5-203 through R17-5-206 and the term "motor carrier" is substituted.
 6. "Gross vehicle weight rating (GVWR)" is amended by adding:
In the absence of a value specified by the manufacturer and the vehicle identification number, law enforcement shall use a vehicle's actual gross weight or declared gross weight to determine the GVWR.
 7. "Regional Director of Motor Carriers" means the Division Director of the Arizona Department of Transportation, Motor Vehicle Division.
 8. "Special agent" means an officer or agent of the Department of Public Safety, the Division, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
 9. "State" means a state of the United States or the District of Columbia.
 10. "Tow truck," as used in the definition of emergency in 49 CFR 390.5, has the meaning prescribed under A.A.C. R13-3-101.
- C. 49 CFR 390.15 Assistance in investigations and special studies. Paragraph (a) is amended to read:
A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within the time the request or inquiry specifies. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.
- D. 49 CFR 390.21 Marking of CMVs. Paragraph (a) is amended to read:
This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier not subject to U.S. Department of Transportation marking requirements shall mark its vehicle with the:
1. Company name, or
 2. Business trade name, and
 3. City and state.
- E. 49 CFR 390.23 Relief from regulations.
1. Paragraph (a) is amended to read:
Regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that:
 - a. Is exempt from federal jurisdiction, and
 - b. Operates a commercial motor vehicle used or designated to provide relief during an emergency.
 2. Paragraphs (a)(1), (a)(1)(i), (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii) are deleted.
 3. Paragraph (a)(2)(i)(A) is amended as follows:
An emergency has been declared by a federal, state, or local government official having authority to declare an emergency; and
 4. Paragraph (a)(2)(i)(B) is amended as follows:
The Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines relief from these regulations is necessary to provide vital service to the public, relief shall be granted with any restrictions the Arizona Department of Public Safety considers necessary.
 5. "Interstate commerce" as used in paragraph (b) means engagement in a commercial enterprise.
- F. 49 CFR 390.25 Extension of relief from regulations - emergencies is amended as follows:
A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau. The motor carrier shall give full details of the additional relief requested. The Arizona Department of Public Safety shall observe time limits for emergency relief from regulations as prescribed under 49 CFR 390.23(a), but may extend a period of relief after considering:
1. Severity of the emergency,
 2. Nature of relief services to be provided by the motor carrier, and
 3. Other restrictions that may be necessary.
- G. 49 CFR 390.27 Locations of motor carrier safety service centers is amended to read:
A motor carrier requesting relief from these regulations shall contact the Arizona Department of Public Safety, Commercial Vehicle Enforcement Bureau, Telephone (602) 223-2522.

R17-5-206. Motor Carrier Safety: Amendment to 49 CFR 392

- A.** 49 CFR 392.5 Alcohol prohibition. Paragraph (e) is amended to read:
Drivers who violate the terms of an out-of-service order as prescribed in this Section are subject to the provisions and sanctions of A.R.S. § 28-5232.
- B.** 49 CFR 392.9a is deleted.

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R17-5-209. Hazardous Materials Transportation

A. Incorporation of federal regulations.

1. The Motor Vehicle Division incorporates the following portions of the Federal Hazardous Materials Regulations by reference. Materials incorporated by reference are on file in the Secretary of State's Office. The incorporated Hazardous Materials Regulations are published in 49 CFR Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Research and Special Programs Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.
2. These parts are incorporated as printed in the October 1, ~~2001~~ 2002 edition, and those sections of the October 1, 1991 edition authorized for use under the transitional provisions of Section 171.14 of the October 1, ~~2001~~ 2002 edition.

B. Application and exceptions.

1. Application.
 - a. Regulations incorporated in subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined in A.R.S. § 28-5201.
 - b. Regulations incorporated in subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
2. Exceptions. An authorized emergency vehicle, as defined in A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

1. Part 171. General information, regulations, and definitions.
 - a. Section 171.1 Purpose and scope.
Paragraph (a) is amended to read:
"The transportation of hazardous materials by and their offering to: (1) interstate, intrastate, and foreign motor carriers; and (2) vehicles owned or operated by the state, a political subdivision or a state public authority, which are used to transport hazardous material."
 - b. Section 171.8 Definitions and abbreviations. Section 171.8 is amended by revising the definitions for "Carrier," "Hazmat employer," and "Person," and adding a definition for "Highway" as follows:
"Carrier" means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material."
"Hazmat employer" means a person who uses one or more of its employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined in A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities."
"Highway" means a public highway defined in A.R.S. § 28-5201."
"Person" has the same meaning as in A.R.S. § 28-5201."
2. Part 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements.
Section 172.3 Applicability.
Paragraph (a)(2) is amended to read:
"Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway."
3. Part 177. Carriage by public highway.
 - a. Section 177.800 Purpose and scope of this part and responsibility for compliance and training.
In paragraph (a), the phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway."

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- b. Section 177.802 Inspection. Section 177.802 is amended to read: "Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed in A.R.S. §§ 28-5204 and 28-5231."